



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1994

Ms. Cynthia N. Milne
General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR94-144

Dear Ms. Milne:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 21432.

The Texas Department of Criminal Justice ("TDCJ") received an open records request from an inmate for his own unit classification file. You wish to withhold three inter-office communications that describe an incident in which the requestor's wife was arrested for possession of marijuana while visiting the requestor.² You believe that these documents are excepted from required public disclosure by section 552.108 of the Government Code.

In pertinent part, section 552.108 excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" For cases that are still under active investigation, section 552.108 may be invoked to except from disclosure all information except that generally found on the first page of an offense report. In closed cases, however, the law enforcement agency must demonstrate that release of the information

¹The Seventy-third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. See Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

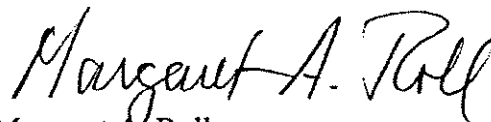
²These three documents are the only records you have submitted for review. Therefore, we assume that you have released all of the other information requested.

would unduly interfere with law enforcement before it can withhold the information under section 552.108. Open Records Decision No. 611 (1992) at 2.

We conclude that section 552.108 permits you to withhold the identities of the TDCJ personnel involved in the incident, but not any other information in the documents you submitted for review. You have not provided us with any indication that these documents relate to an active investigation. Rather, you argue that releasing the documents would give the requestor information about TDCJ's modes of surveillance and intervention into criminal activity by visitors to the inmates. You believe that the requestor could use this information to help his wife and other visitors circumvent detection in the future. We reject this argument because the documents do not reveal anything about modes of surveillance or intervention into criminal activity that the requestor's wife could not have observed during the incident. On the other hand, we agree with your position that the requestor might use the information to retaliate against the TDCJ personnel involved in the incident. Therefore, you may withhold the information that reveals the identities of the TDCJ personnel involved in the incident. We have marked this information on the three documents. You must, however, release the remaining information you submitted for review.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 21432
ID# 21507

Enclosures: Submitted documents

cc: Mr. Raul Peña
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(w/o enclosures)